

**Internal Revenue Service**  
Appeals Office  
401 W. Peachtree St. N.W.  
Atlanta, GA 30308-3510

Date: July 27, 2010

Number: **201044026**  
Release Date: 11/5/2010

ORG  
ADDRESS

**CERTIFIED MAIL**

Dear :

This is a final determination regarding your foundation classification. This letter modifies our letter to you dated January 12, 2001, in which we determined that you would be treated as a publicly supported organization.

This letter modifies our letter dated May 21, 2004 stating the organization met the public support test under section 170(b)(1)(A)(vi).

Based on your sources of support, we have determined that you are a private non-operating foundation described under section 509(a) of the Code, effective January 1, 2004.

The modification of your foundation status was made for the following reason(s):

Based upon the examination of the organization's records it was determined the organization does not meet the public support tests described under section 509(a) of the Code.

Your tax exempt status under section 501 (c)(3) of the Internal Revenue Code is not affected. Grantors and contributors may rely on this determination, unless the Internal Revenue Service publishes a notice to the contrary. Because this letter could help resolve any questions about your private foundation status, please keep it with your permanent records.

**Department of the Treasury**

**Person to Contact:**

Employee ID Number:

Tel:

Fax:

**Refer Reply to:**

**In Re:**

**Tax Period(s) Ended:**

UIL: 501.03-30

You are required to file Form 990-PF, Return of Private Foundation. Form 990-PF must be filed by the 15th Day of the fifth month after the end of your annual accounting periods. A penalty of \$20 a Day is charged when a return is filed late, unless there is reasonable cause for the delay; however, the maximum penalty charged cannot exceed \$10,000 or 5 percent of your gross receipts for the year, whichever is less. This penalty may also be charged if a return is not complete, so please be sure your return is complete before you file it. For foundations with gross receipts exceeding \$1,000,000 in any year, the penalty is \$100 per Day.

Processing of tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91<sup>st</sup> Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:

United States Tax Court  
400 Second Street, NW  
Washington, DC 20217

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established Internal Revenue Service procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Taxpayer Advocate Service  
10 West 15th Street  
Suite 2319  
Helena, MT 59626  
406-441-1022

See the enclosed Notice 1546, Taxpayer Advocate Service - Your Voice at the IRS, for Taxpayer Advocate telephone numbers and addresses. If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

CHARLES FISHER  
TEAM MANAGER

**Internal Revenue Service  
Tax Exempt and Government Entities Division  
230 S. Dearborn  
Chicago, IL 60604**

**Department of the Treasury**

Date: April 6, 2009

ORG  
ADDRESS

Taxpayer Identification Number:  
Form:  
Tax Year(s) Ended:  
Person to Contact/ID Number:  
Contact Telephone Number:  
Contact Fax Number:

**CERTIFIED MAIL - RETURN RECEIPT  
REQUESTED**

Dear :

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate

cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Sunita Lough  
Director, EO Examinations

Enclosures:

Publication 892

Publication 3498

Report of Examination

|   |  |   |
|---|--|---|
| Form <b>886A</b>                              | Department of the Treasury - Internal Revenue Service<br><b>Explanation of Items</b> | Schedule No. or<br>Exhibit                                  |
| Name of Taxpayer<br><b>ORG</b><br><b>EIN:</b> |  | Year/Period Ended<br>December 31, 20XX<br>December 31, 20XX |

**LEGEND**

ORG = Organization name      XX = Date      Address = address      City = city  
State = state      County = county      PA = PA      TRU-1 & TRU-2 = 1<sup>st</sup> & 2<sup>nd</sup>  
TRUSTEE      RA-1 = 1<sup>st</sup> RA      CO-1, CO-2, CO-3, CO-4, CO-5, CO-6, CO-7 & CO-8  
= 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, & 8<sup>th</sup> COMPANIES      DIR-1, DIR-2, DIR-3, DIR-4, DIR-5, DIR-6, DIR-7 & DIR-8 = 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, & 8<sup>th</sup> DIRECTORS

**ISSUE:**

1. Whether the ORG's ("ORG") tax-exempt status under IRC § 501(c)(3) should be revoked because it is not operated exclusively for exempt purposes?

**FACTS:**

On December 10, 19XX, a document entitled "Complete and Self-Contained Appraisal Report on Various Land City, State", was completed for CO-1 a grantor trust with TRU-1 as trustee. The appraisal was conducted by TRU-2 of CO-2. TRU-2 is now deceased. The appraisal concluded that the value of the 642.80 acres owned by TRU-1, through the grantor trust, was \$. The appraisal determined that the farmland could be later developed for residential and commercial purposes. Portions of these 642.80 acres were subsequently encumbered with conservation easements and donated to a newly formed organization, the ORG, ("ORG").

On December 16, 19XX, ORG was incorporated by DIR-1. DIR-1 law firm, the CO-3, is located at Address, City, State, and has provided legal services for TRU-1 and the CO-1. According to ORG's Articles of Incorporation, "[t]he corporation is organized exclusively for charitable, educational, religious or scientific purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986, as amended" and "[t]he primary purpose of the Corporation is for the preservation of open space for the scenic enjoyment of the general public." The Certificate of Incorporation was filed in the State of State and is governed by, construed and administered in accordance with the laws of the State of State.

ORG's listed address is the same as TRU-1's business address, Address, City, State. ORG's original (and current) board of directors included, DIR-2, DIR-3, DIR-4, DIR-5, DIR-6, and DIR-7. All board members are close associates of TRU-1. TRU-1 has known each board member for more than twenty years and has known three board members, DIR-3, DIR-5, and DIR-2, for more than fifty years. DIR-4 has been TRU-1's property and casualty insurance agent since the 1960s. DIR-6 has sold TRU-1 promotional items and jewelry. In addition, TRU-1's personal assistant, PA, is presently listed as the contact person and corporate secretary for ORG. Lastly, ORG's accountant, ACCT, has known TRU-1 for over forty years and provides TRU-1 and his business interests with accounting and income tax services. None of ORG's board members have any formal training in conservation matters.

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| Form <b>886A</b>                              | Department of the Treasury - Internal Revenue Service<br><b>Explanation of Items</b> | Schedule No. or<br>Exhibit                                  |
| Name of Taxpayer<br><b>ORG</b><br><b>EIN:</b> |  | Year/Period Ended<br>December 31, 20XX<br>December 31, 20XX |

In a document entitled "Minutes of Informal Action of the Board of Directors of ORG", dated December 20, 19XX, it was resolved that ORG would file a Form 1023 signed by DIR-4. It was also resolved that:

...the corporation accept a Deed of Conservation Easement from CO-1 for a 225 acre parcel in 2-89-XX and that DIR-6 be authorized to execute same on behalf of the corporation. The directors are familiar with this real property, have visited it, and believe that it meets the criteria and purpose of the corporation.

ORG submitted an application for recognition of exemption to the Internal Revenue Service on December 22, 19XX. The application was signed by DIR-4. In its application for exemption, ORG described the activities of the organization as follows:

This is a newly created entity whose purpose is preserve open space for the scenic enjoyment of the general public. To that extent, it will actively seek out conservation easements, land transfers, and other restrictions that will fulfill that goal. Most of the work will be done in the Northwest Quarter of the State of State. Once transfers take place we will monitor, manage, and keep records of the property interests. All work will be done by volunteers, initially the board of directors. We will solicit funds from the general public.

ORG indicated on the application that no members of the organization's governing body were "disqualified persons" with respect to the organization nor did any members have either a business or family relationship with "disqualified persons". ORG also stated that funds would be solicited from the general public and that it would investigate potential grants to fund operations, as well as raise funds via annual solicitations made by its board members. ORG received \$ in initial contributions in 19XX. All of the 19XX financial contributions came from five of ORG's board members and DIR-8, an individual that TRU-1 would engage in a real estate transaction with in 20XX. Each initial contribution made was for \$.

On December 28, 19XX, TRU-1 as trustee of CO-1 executed a Deed of Conservation Easement ("19XX easement") to ORG as indicated in ORG's "Minutes of Informal Action." As expected, DIR-6 signed the Deed of Conservation Easement on behalf of ORG. The 19XX easement asserts that the property possesses natural, scenic, and open space values of great importance to the donor, the people of City, County, and the State of State. The stated purpose of the 19XX easement is as follows:

It is the purpose of this Easement to assure that the Property will always be retained forever in its scenic, agricultural and open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, Grantor intends that this Easement will confine the use of the Property to such activities, including, without limitation,

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those involving farming, recreation, and education, as are not inconsistent with the purpose of this Easement.

Although the terms of the 19XX easement provide that the easement will allow farming, recreation, and education activities which are consistent with its terms, section 7 of the 19XX easement specifically states "[n]o right of physical access by the general public to any portion of the Property is conveyed by this Easement." The property encumbered by the easement is active farmland and cannot be readily viewed from the road. The 19XX easement provides that legal notice and all communications are to be served on TRU-1, trustee of CO-1, c/o DIR-1.

TRU-1 later claimed a \$ charitable contribution deduction on his 19XX federal income tax return for contributing the 19XX easement. This amount is also reflected on the Form 8283, which accompanied TRU-1's Form 1040 for tax year 19XX. The Form 8283 valued the easement contribution in two separate component parts. One portion valued the easement covering 75 acres of the land to be worth \$ while TRU-1 claimed a \$ cost basis in that portion of the property. The other portion of the donated easement covering 150 acres of land was valued at \$. TRU-1 claimed a cost basis of \$ in that portion of the land. The Form 8283 was signed by DIR-4 on behalf of ORG. During a later examination of TRU-1's 19XX federal tax return, an Internal Revenue Service Engineer found that the easement donation was overvalued by 25 percent. TRU-1 agreed to a reduced charitable deduction. The Service never examined whether the easement served a conservation purpose within the meaning of IRC § 170(h)(4)(A).

On December 31, 19XX, three days following ORG's acceptance of the 19XX easement, ORG opened a checking account at CO-4 of City, State. According to a document received from the bank, the first person listed as a signatory on the account is TRU-1. CO-4 of City has informed the Service that TRU-1's name listed on the signature card was a mistake. However, TRU-1's signature is on Check #131, dated May 27<sup>th</sup> 20XX, to CO-5 on behalf of ORG in the amount of \$. It is the policy of CO-4 of City to not review signatures for payments in amounts below \$. All other checks on behalf of ORG were signed by DIR-4. Both ORG and TRU-1 bank at CO-4 of City.

On January 12, 20XX, ORG received a favorable advance determination letter from the Internal Revenue Service stating that the organization was recognized as exempt from federal income tax under IRC § 501(a) as an organization described in § 501(c)(3) and treated as a publicly supported organization. On December 1, 20XX, the Service sent a letter to ORG advising that its advance ruling period had ended and requesting that the organization establish that it is a publicly supported organization under either IRC §§ 509(a)(1)/170(b)(1)(A)(vi) or § 509(a)(2) and that the organization complete the attached Form 8734, Support Schedule for Advance Ruling Period. On May 5, 20XX, the Service sent a letter to ORG requesting additional information because the financial information previously submitted indicated that ORG did not meet the 33 1/3 percent public support test because only 22 percent of the organization's support came from public sources. The letter further stated that the organization might still meet the requirements of IRC



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§§ 509(a)(1) and 170(b)(1)(A)(vi) by meeting the 10 percent facts and circumstances test as described in those Code sections. On May 12, 20XX, ORG responded to the request for additional information. In its response, ORG answered "yes" to the following questions:

- a. Do you plan to receive support from a representative number of people rather than from members of a single family?
- c. Does your governing body represent the broad interest of the general public or rather the private interests of a limited number of donors?
- e. Do you provide a facility or service directly for the benefit of the general public on a continuing basis?
- h. Do you maintain a definitive, ongoing program to accomplish our exempt purposes?

On May 21, 20XX, the Service sent a final determination letter to ORG granting it §§ 509(a)(1)/170(b)(1)(a)(vi) status.

On November 30, 20XX, ORG's board held a special meeting. The board decided that ORG would accept a Deed of Conservation Easement ("20XX easement") from CO-1. This easement was for another 71.45 acres of the larger 642.80 acre parcel part of which had been previously used for the 19XX easement donated to ORG by the Trust. The minutes also provided that DIR-4 was authorized to execute the 20XX easement on behalf of ORG. On the same date, TRU-1 as trustee of CO-1 donated the 20XX easement to ORG for which DIR-4 executed on behalf of ORG. With the exception of the description of the land covered by the easement, the language in the 20XX easement is identical to the language in the 19XX easement. TRU-1 executed the 20XX easement on November 30, 20XX, in favor of ORG, while DIR-4 signed the 20XX easement on behalf of ORG.

According to an appraisal report by \_\_\_\_\_ dated August 20, 20XX, the land covered by the 20XX easement was valued at \$. The report states that it was intended only for internal decision making by the client and only for the use of mortgage financing from the client identified in the report and their successors and assignees. The report was subsequently used to support the value of the conservation easement donated to ORG and was reflected on the Form 8283 accompanying TRU-1's 20XX federal income tax return. The Form 8283 listed \$ as TRU-1's cost basis in the property. The Form 8283 was signed by DIR-4 on November 30, 20XX. TRU-1 claimed \$ as a charitable contribution on his 20XX federal tax return. ORG's board minutes for September 8, 20XX, September 14, 20XX, September 13, 20XX and September 11, 20XX state that the board visited the 19XX easement and that there had been no violation of the conservation easement. The ORG board minutes for September 10, 20XX and September 9, 20XX state that the board visited both the 19XX easement and the 20XX easement and that there had been no violation of either conservation easement. Although the board meeting minutes

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discuss visiting the property encumbered by the easements there were no reports or photographs documenting any inspection.

From 20XX-20XX, ten contributors are reflected in the corporate books and records as having made contributions to the organization. Six of those contributors were board members and two were businesses owned by board members; Automatic Award Spec is operated by DIR-3 and CO-6 is operated by DIR-7. The other two contributors were RA-1 and CO-7, a business owned and operated by RA-1. Although RA-1 is not a board member, in June of 20XX, TRU-1 purchased land from RA-1.

The general ledger of the CO-1 also reflects that during 20XX and 20XX, ORG board member DIR-2 was regularly reimbursed for office expenses, telephone charges, business meals and other personal expenses. Further, on 03/18/XX seven checks numbered each in the amount of \$ and each payable to either an ORG board member or an individual associated with TRU-1, were written from TRU-1's personal/business account and recorded on the general ledger of the CO-1. Each of the six \$ donations received from ORG during the year 20XX was from one of those same board members who received payments of \$ from TRU-1.

From December of 19XX through 20XX, ORG's annual contributions and year end cash reserves are as follows:

| Contributors             | 20XX | 20XX | 20X<br>X | 20XX | 20XX | 20XX |
|--------------------------|------|------|----------|------|------|------|
| DIR-2<br>(Board Member)  | \$   | \$   |          | \$   |      | \$   |
| DIR-3<br>(Board Member)  | \$   | \$   |          |      |      | \$   |
| Automotive Award<br>Spec |      |      |          | \$   |      | \$   |
| DIR-4 (Board<br>Member)  | \$   | \$   |          |      |      |      |
| DIR-6 (Board<br>Member)  |      | \$   |          | \$   |      | \$   |
| RA-1                     |      | \$   |          | \$   |      | \$   |
| CO-7                     | \$   |      |          |      |      |      |
| DIR-5 (Board<br>Member)  | \$   | \$   |          | \$   |      | \$   |
| CO-6                     |      | \$   |          |      |      | \$   |

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| DIR-7<br>(Board Member)                                   |  |  |  |    |  |  |
|   |  |  |  | \$ |  |  |
| <b>Total Contributions<br/>Year End Cash<br/>Reserves</b> |  |  |  |    |  |  |

The organization does not maintain a website, nor does it publish any brochures or use any other communication tools to raise awareness with the general public. It also does not engage in any educational activities with respect to land conservation.

**LAW:**

IRC section 501(c)(3) provides for the exemption from federal income tax of organizations that are organized and operated exclusively for charitable or other exempt purposes. Treasury Regulation 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Treasury Regulation 1.501(c)(3)-1(c)(1) further provides that to operate "exclusively" for exempt purposes, an organization must engage "primarily" in activities that accomplish one or more exempt purposes and not conduct more than an insubstantial amount of activities that further nonexempt purposes.

Treasury Regulation §1.501(c)(3)-1(d)(2) states that the term "charitable" is used in IRC section 501(c)(3) in its generally accepted legal sense. Under the regulations, the term "charitable" includes, but is not limited to: 1) relief of the poor and distressed or the underprivileged, 2) advancement of religion, 3) advancement of education or science, 4) erection or maintenance of public buildings, monuments, or works; 5) lessening the burdens of government, and 6) social welfare by organizations designed to accomplish any of the aforementioned purposes, or (i) to lessen neighborhood tensions, (ii) to eliminate prejudice and discrimination, (iii) to defend human and civil rights secured by law, or (iv) to combat community deterioration and juvenile delinquency.

In Revenue Ruling 76-204, 1976-1 C.B. 152, an organization was formed for the purpose of preserving the natural environment. The organization accomplished this purpose by acquiring and maintaining ecologically significant, and undeveloped land such as swamps, marshes, forests, wilderness tracts, and other natural areas. The organization acquired its landholdings either through charitable gifts or bequests, or by directly purchasing land from private owners. The organization worked closely with Federal, state, and local government agencies, and private organizations that were also concerned with environmental conservation. The ruling noted that Congress recognized that the conservation and protection of natural resources and the environment serve a broad public benefit. The ruling cited several Federal Acts, including the

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National Environmental Policy Act of 1969 and the Wilderness Act of 1964, whereby the Federal Government sought to foster environmental conservation. The ruling reasoned that by preserving "ecologically significant undeveloped land, the organization is enhancing the accomplishment of express national policy of conserving the nation's unique natural resources." Thus, the ruling concluded that the "organization is advancing education and science and is benefiting the public in a manner that the law regards as charitable." Thus, the IRS has recognized that environmental conservation is an exempt charitable purpose under IRC section 501(c)(3).

In Revenue Ruling 78-384, 1978-2 C.B. 174, however, the IRS held that the preservation of ordinary parcels of farm land does not constitute an exempt purpose within the meaning of IRC section 501(c)(3), since the land did not have "any distinctive ecological significance within the meaning of Rev. Rul. 76-204," and the public benefit was "too indirect and insignificant." Furthermore, the organization did not engage in any other activities that could be characterized as exempt activities under IRC section 501(c)(3). See Dumaine Farms v. Commissioner, 73 T.C. 650 (1980).

The IRS also recognizes that organizations operated primarily for one or more of the conservation purposes under IRC section 170(h)(4)(A) operate for a charitable purpose under IRC section 501(c)(3). IRC section 170(h)(4)(A) lists the following conservation purposes:

- (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
- (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- (iii) the preservation of open space (including farmland and forest land) where such preservation is --
  - (I) for the scenic enjoyment of the general public, or
  - (II) pursuant to a clearly delineated federal, state, or local governmental conservation policy, and will yield a significant public benefit, or
- (iv) the preservation of an historically important area or a certified historic structure.

To establish that it operates exclusively for conservation purposes under IRC section 501(c)(3), however, an organization must do more than merely accept and hold easements that meet the requirements of IRC section 170(h). Treas. Reg. § 1.170A-14(c)(1) states the following:

(c) Qualified organization—(1) Eligible donee.

To be considered an eligible donee under this section, an organization must be a qualified organization, have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the restrictions. A conservation group organized or

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operated primarily or substantially for one of the conservation purposes specified in section 170(h)(4)(A) will be considered to have the commitment required by the preceding sentence. A qualified organization need not set aside funds to enforce the restrictions that are the subject of the contribution. For purposes of this section, the term qualified organization means:

- (i) A governmental unit described in section 170(b)(1)(A)(v);
- (ii) An organization described in section 170(b)(1)(A)(vi);
- (iii) A charitable organization described in section 501(c)(3) that meets the public support test of section 509(a)(2);
- (iv) A charitable organization described in section 501(c)(3) that meets the requirements of section 509(a)(3) and is controlled by an organization described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

An organization will also fail to operate for a charitable purpose under IRC section 501(c)(3) if it conducts or promotes illegal activities and does not further an exempt purpose. All organizations that are exempt from federal income tax under IRC section 501(c)(3) must conform to certain fundamental legal principles applicable to all charitable organizations. See Treas. Reg. §1.501(c)(3)-1(d)(2) and Rev. Rul. 67-235. Courts have been willing to uphold the Service's determinations to not recognize or revoke an organization's tax-exempt status where it has actively facilitated, participated in, or promoted tax avoidance transactions or arrangements. See, e.g., New Dynamics Foundation v. United States, 70 Fed.Cl. 782, 802-803 (20XX), Freedom Church of Revelation v. United States, 588 F.Supp. 693, 696 (D.D.C. 1984), and Church of World Peace, Inc. v. Commissioner, T.C. Memo. 1994-87, aff'd, 52 F.3d 337.

An organization will fail to operate for a charitable purpose under IRC section 501(c)(3) if it primarily operates to serve private interests. The presence of a private benefit, if substantial, will destroy an organization's exemption regardless of its other charitable purposes or activities. See Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945). However, occasional economic benefits flowing to persons as an incidental consequence of an organization pursuing exempt charitable purposes generally will not constitute prohibited private benefits. See Kentucky Bar Foundation v. Commissioner, 78 T.C. 921, 926 (1982). In American Campaign Academy v. Commissioner, 92 T.C. 1053, 1069 (1989), the Tax Court defined "private benefits" as "nonincidental benefits conferred on disinterested persons that may serve private interests."

In Revenue Ruling 67-5, 1967-1 C.B. 123, it was held that a foundation controlled by the creator's family was operated to enable the creator and his family to engage in financial activities which were beneficial to them, but detrimental to the foundation. It was further held that the foundation was operated for a substantial non-exempt purpose and served the private interests of

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| Form <b>886A</b>                       | Department of the Treasury - Internal Revenue Service<br><b>Explanation of Items</b> | Schedule No. or<br>Exhibit                                  |
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the creator and his family. Therefore, the foundation was not entitled to exemption from Federal income tax under IRC section 501(c)(3).

### **GOVERNMENT'S POSITION:**

The IRC § 501(c)(3) tax exempt status of The ORG ("ORG") should be revoked because it is not operated exclusively for tax exempt purposes.

An organization described in section 501(c)(3) must establish that it is not organized or operated for the benefit of private interests. Treas. Reg. section 1.501(c)(3)-1(d)(1)(ii). During the first six years of its existence, the only activity conducted by ORG consisted of accepting two overvalued conservation easements from a grantor trust controlled by ORG's de facto founder, TRU-1. All persons associated with ORG have either a long term business or personal relationship with TRU-1. These relationships were not disclosed in the organization's application for recognition of exemption. In addition, TRU-1's accountant, attorney, and insurance agent all provide services to ORG. In fact, TRU-1's accountant billed "TRU-1 Management" for services provided to ORG. TRU-1's personal assistant is the secretary for ORG and his business address is the same address listed for ORG.

ORG does not accept or solicit donations from the general public, does not engage in activities furthering conservation education, does not maintain a website or make any public outreach efforts, and appears to exist solely to serve as a vehicle to accept donations of the conservation easements from a trust in which TRU-1 is the trustee. The presence of a private benefit, if substantial, will destroy an organization's exemption regardless of its other charitable purposes or activities. See Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945).

The stated purpose of ORG is to preserve open space for the scenic enjoyment of the general public. According to Treas. Reg. section 1.170A-14(d) (4) conservation easements for the preservation of open space must (1) preserve open space pursuant to a clearly delineated federal, state, or local governmental conservation policy or (2) preserve open space for the scenic enjoyment of the general public and yield significant public benefit.

The easements donated to the organization were not made pursuant to any clearly delineated governmental conservation policy. The taxpayer was asked to provide information about such governmental policy and did not provide any specific governmental policy for either the 19XX or the 20XX easement. A statement that County and the State of State have conservation statutes is not sufficient.

Additionally, to satisfy the open space for the general public conservation requirement, a conservation easement must be more than ordinary land. In Revenue Rulings 76-204 and 78-384

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it was held that the land must be "ecologically significant" and that the preservation of ordinary farmland was not sufficient to justify exemption under section 501(c)(3) of the Code. The conservation easements donated to ORG consist of ordinary farmland currently rented out for livestock feeding and for growing corn and soybeans. There are no unique features about the land such as protected native plants, trees or animals. In addition, the areas are not visible from the road, so there is no scenic enjoyment by the public. An IRS engineer's report found that the benefit to the general public is not significant. The organization is not operated for a charitable purpose because it did not take the steps necessary to ensure that the easements it has accepted serve a conservation purpose. Its directors have no expertise or training that would enable them to determine whether an easement serves a conservation purpose. Moreover, the organization does not monitor the easements that it has accepted and does not have the commitment to protect any conservation purposes of any donations, nor the financial resources to enforce the easements in the event enforcement becomes necessary.

In the alternative, if the organization is determined to serve an exempt purpose as described in section 501(c)(3) the Service contends that the organization is a private foundation. A review of contributions received by the organization reveals that all the donors to the organization were board members or had a business or personal relationship with TRU-1, the donor of the conservation easements. The organization never satisfied the 33 1/3% support test of either sections 170(b)(1)(A)(v)(i) and 509(a)(1) or 509(a)(2). In the organization's application for recognition of exemption submitted under penalties of perjury, and in information in response to the foundation follow-up after the organization's advance ruling period, ORG stated that it would solicit contributions from the general public. The organization has never had a fundraising program to solicit public support. The Service erred in its conclusion that ORG was a public charity at the end of its advance ruling based upon a substantial misrepresentation of the organizations intent to solicit support from the general public.

#### **TAXPAYER'S POSITION:**

The taxpayer's position is that the conservation easements it holds protects farmland and limits development in the area. It further states that the easements serve a valid conservation purpose and that it is a qualified conservation organization.

#### **CONCLUSION:**

Accordingly, the Organization's status as an organization described under section 501(c)(3) should be revoked, effective December 16, 19XX, because it did not operate exclusively for exempt purposes because its assets inured to, and it served the private interests of, its creators.